

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LEIF SKOOGFORS, an individual,
v.
DONALD L. LUSKIN, an individual,
Defendant

CASE NO. 1:13-CV-08775

Judge:

Magistrate Judge:

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES

COMES NOW, Plaintiff Leif Skoogfors ("Skoogfors"), who states his claims against Donald L. Luskin ("Luskin") as follows:

JURISDICTION AND VENUE

1.

This action arises under the Federal Copyright Act of 1976, as amended, 17 U.S.C. § 101, *et seq.* Jurisdiction is founded on 28 U.S.C. §§ 1331 (federal question) and 1338(a) (copyright).

2.

This Court has personal jurisdiction over Luskin by virtue of his presence in this District and his transacting, doing, and soliciting business in this District.

3.

Venue is proper under 28 U.S.C. §§ 1391(b)(1) and (2) and (c) and 1400(a).

THE PARTIES

4.

Skoogfors is domiciled in the United States, residing in Pennsylvania.

5.

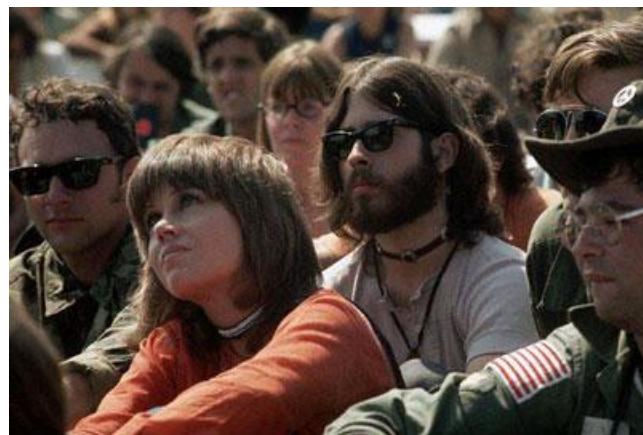
On information and belief, Luskin is domiciled in and a resident of the metropolitan Chicago, Illinois, area.

OPERATIVE FACTS

6.

Skoogfors has worked for more than 45 years as a documentary photographer, photojournalist, and teacher. He has worked as a journalist for media such as the Mutual Broadcasting Company, the BBC, and Radio Zambia. Skoogfors has worked in numerous conflict and disaster zones for Newsweek, Time, Paris Match, and FEMA. His photographs appear in museums, private collections, and publications.

In 1970, Skoogfors attended an anti-war rally in Valley Forge, PA, and took a photograph of attendees, including Jane Fonda and John Kerry, as shown below ("Photograph").



8.

Skoogfors first began offering the Photograph for license through Corbis Corporation in or around 1997.

9.

Skoogfors has complied in all respects with the Copyright Act of 1976, 17 U.S.C. §101 *et seq.*, as amended, and all other laws and regulations governing copyrights. Therefore, Skoogfors has secured the exclusive rights and privileges in and to the copyrights for the Photograph. The Register of Copyrights for the U.S. Copyright Office issued a Certificate of Copyright Registration for the Photograph, number VA0000863783, with an effective date of November 6, 1997 (shown below).

CERTIFICATE OF REGISTRATION	
 THE LIBRARY OF CONGRESS UNITED STATES COPYRIGHT OFFICE	
<p>This Certificate issued under the seal of the Copyright Office in accordance with the United States Statute, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.</p>	
FORM VA A Work of the Visual Arts UNITED STATES COPYRIGHT OFFICE	
VA 953783 <small>Eff. 1/1/78. Mailed 11/11/1997</small>	
<i>Marybeth Peters</i> <small>Month Day Year</small>	
REGISTER OF COPYRIGHTS <small>NOV 06 1997</small>	
NATURE OF THIS WORK <input type="checkbox"/> See Instructions VA0000863783 MARCH 17 1997 7 Disks of Digital Images	
PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. <small>Title of Collective Work</small>	
If published in a periodical or serial give: Volume <input type="text"/> Number <input type="text"/> Issue Date <input type="text"/> On Page <input type="text"/>	
NAME OF AUTHOR <input type="checkbox"/> See Instructions CORBIS CORPORATION	
DATES OF BIRTH AND DEATH <input type="checkbox"/> See Instructions Year Born <input type="text"/> Year Died <input type="text"/>	
AUTHOR'S NATIONALITY OR DOMICILE <input type="checkbox"/> See Instructions USA	
WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK <input type="checkbox"/> See Instructions Author <input type="checkbox"/> Yes <input type="checkbox"/> No Domiciled in <input type="checkbox"/> See Instructions	
NOTE <small>Was this contribution to the work a derivative work made for hire?</small>	
NATURE OF AUTHORITY <input type="checkbox"/> See Instructions 3-Dimensional sculpture <input type="checkbox"/> Map <input type="checkbox"/> Technical drawing 2D-Dimensional artwork <input type="checkbox"/> Photograph <input type="checkbox"/> Text Reproduction of work of art <input type="checkbox"/> Jewelry design <input type="checkbox"/> Architectural work Compilation <input type="checkbox"/> Design on sheetlike material	
NAME OF AUTHOR <input type="checkbox"/> See Instructions Dave Bartruff, Tom Bean and 125 other photographers	
DATES OF BIRTH AND DEATH <input type="checkbox"/> See Instructions Year Born <input type="text"/> Year Died <input type="text"/>	
AUTHOR'S NATIONALITY OR DOMICILE <input type="checkbox"/> See Instructions USA	
WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK <input type="checkbox"/> See Instructions Author <input type="checkbox"/> Yes <input type="checkbox"/> No Domiciled in <input type="checkbox"/> See Instructions	
NATURE OF AUTHORITY <input type="checkbox"/> See Instructions 3-Dimensional sculpture <input type="checkbox"/> Map <input type="checkbox"/> Technical drawing 2D-Dimensional artwork <input type="checkbox"/> Photograph <input type="checkbox"/> Text Reproduction of work of art <input type="checkbox"/> Jewelry design <input type="checkbox"/> Architectural work Compilation <input type="checkbox"/> Design on sheetlike material	
YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED <input type="checkbox"/> This information is required if you are claiming a copyright in your original work. 1997	
DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK <small>Corporation this information from <input type="checkbox"/> Mailed <input type="checkbox"/> Dep't <input type="checkbox"/> Verbal <input type="checkbox"/> Radio</small> 1997 USA	
COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author(s). CORBIS CORPORATION 15395 30th Place, Suite 300 Bellevue, Washington 98007	
APPLICATION RECEIVED <input type="checkbox"/> Mailed <input type="checkbox"/> Dep't <input type="checkbox"/> Verbal <input type="checkbox"/> Radio NOV 06 1997	
ONE DEPOSIT RECEIVED <input type="checkbox"/> Mailed <input type="checkbox"/> Dep't <input type="checkbox"/> Verbal <input type="checkbox"/> Radio TWO DEPOSITS RECEIVED <input type="checkbox"/> Mailed <input type="checkbox"/> Dep't <input type="checkbox"/> Verbal <input type="checkbox"/> Radio NOV 06 1997	
FUNDS RECEIVED	
By Agreement	
<small>MORE ON BACK <input type="checkbox"/> Copy of applicable clauses numbers 2-8 on the reverse side of this page. * See detailed instructions.</small>	

<small>*Special Relief granted under Sec. 202.20(g) of the C.O. Reg.</small>	
<small>5</small>	
<small>DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.</small>	
<small>PREVIOUS REGISTRATION</small>	
<small>a. Yes <input type="checkbox"/> If yes, name of previous registration for this work, or for an earlier version of this work, already been made in the Copyright Office? b. <input type="checkbox"/> This is the first published edition or work previously registered or published. c. <input type="checkbox"/> This is the first application submitted by this author as copyright claimant. d. <input type="checkbox"/> This is a changed version of the work, as shown by space 6 on this application. If your answer is "Yes" give: Previous Registration Number <input type="text"/></small>	
<small>6</small>	
<small>DERIVATIVE WORK OR COMPILATION</small> Complete both spaces 6a and 6b for a derivative work; complete only 6b for a compilation. <small>a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. <input type="checkbox"/></small> <small>Certain previously published photographs and public domain images</small>	
<small>b. Material Added to This Work</small> Give a brief, general statement of the material that has been added to this work and its copyright is claimed. <small>All other photographs/ digital images and compilation</small>	
<small>7</small>	
<small>DEPOSIT ACCOUNT</small> If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account. <small>Name <input type="text"/> Account Number <input type="text"/> DAO 63797</small>	
<small>8</small>	
<small>CORRESPONDENCE</small> Give name and address to which correspondence about this application should be sent: Name/Address/Apt/City/State/Zip <small>Nancy E. Wolff, Esq., Cavallo & Wolff, 115 East 57th Street, Suite 1220 New York, New York 10022</small>	
<small>9</small>	
<small>CERTIFICATION</small> I, the undersigned, hereby certify that I am the <small>check only one <input type="checkbox"/></small> <small>a. Author <input type="checkbox"/></small> <small>b. Other copyright claimant <input type="checkbox"/></small> <small>c. Owner of exclusive rights <input type="checkbox"/></small> <small>d. Authorized agent of <input type="checkbox"/> Corbis Corporation</small> <small>Name of author or other copyright claimant, or owner of exclusive rights <input type="text"/></small> <small>If the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.</small> <small>Typed or printed name and date <input type="text"/> If this application gives a date of publication in space 3, do not sign and submit it before that date.</small> <small>Date <input type="text"/> 10/27/97</small> <small>Handwritten signature <input type="text"/></small> <small>U.S. GOVERNMENT PRINTING OFFICE: 1995-207-02741</small>	

The Register of Copyrights for the U.S. Copyright Office issued a Certificate of Copyright Registration for the Photograph, number VA0001781223, with an effective date of July 8, 2011 (shown below).

Certificate of Registration	
 <small>This Certificate issued under the seal of the Copyright Office in accordance with title 17, <i>United States Code</i>, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.</small>	
 <small>Maria A. Pallante Register of Copyrights, United States of America</small>	
Registration Number	VA 1-781-223
Effective date of registration:	July 8, 2011
<hr/> Title _____ <small>Title of Work: EF001345, Jane Fonda+John Kerry, anti-war demo</small>	
Completion/Publication _____ <small>Year of Completion: 1970 Date of 1st Publication: November 6, 1997 Nation of 1st Publication: United States</small>	
Author _____ <small>Author: Leif Skoogfors Author Created: photograph(s) Citizen of: United States Domiciled in: United States Year Born: 1940</small>	
Copyright claimant _____ <small>Copyright Claimant: Leif Skoogfors 21 S. Valley Forge Rd., Unit 201, Lansdale, PA, 19446</small>	
Rights and Permissions _____ <small>Name: Leif Skoogfors Email: skoogfors@gmail.com Telephone: 215-855-9470 Address: 21 S. Valley Forge Rd. Unit 201 Lansdale, PA 19446 United States</small>	
Certification _____ <small>Name: Leif Skoogfors Date: July 8, 2011 Applicant's Tracking Number: EF001345</small>	
<small>Correspondence: Yes</small>	
<small>Page 1 of 1</small>	

10.

In January 2012, Skoogfors discovered that Luskin had reproduced and was displaying and distributing the Photograph on Luskin's website at www.poorandstupid.com ("Luskin Website") at http://www.poorandstupid.com/2004_08_29_chronArchive.asp and http://www.poorandstupid.com/images/fonda_ker_vf.jpg , as shown below ("First Use"):

Sunday, August 29, 2004

A BACKBENCHER EVEN THEN...

Whom is **Jane Fonda** looking up at adoringly? And whom is **John Kerry** looking down at longingly? Was it that perky little nose that captivated him? Or the money...?



Posted by Donald Luskin at 7:23 PM | [link](#)

11.

On information and belief, Luskin first reproduced, displayed, and distributed Skoogfors' Photograph on the Luskin Website on Sunday, August 29, 2004.

12.

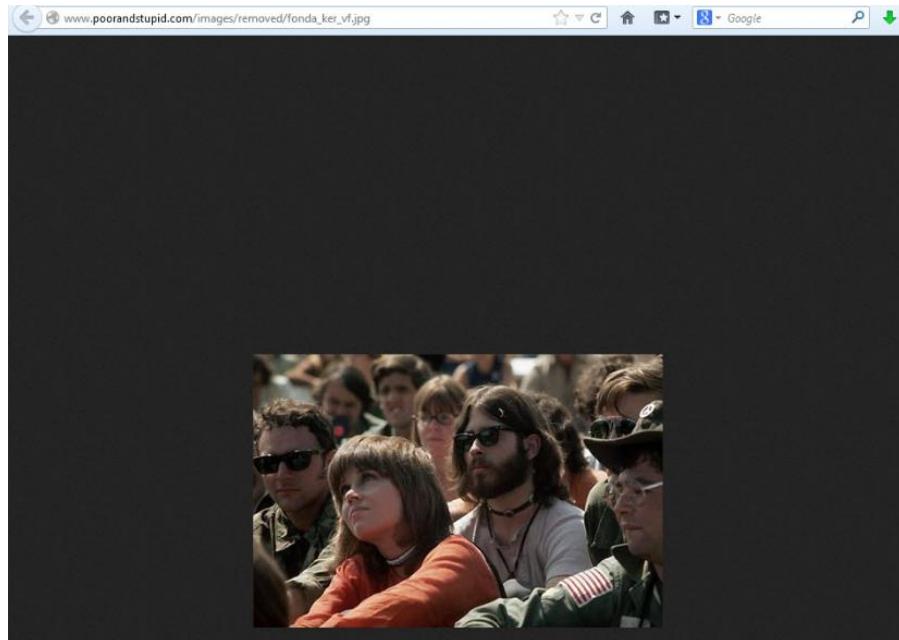
Luskin included no attribution to Skoogfors for the Photograph on the Luskin Website, but posted "Copyright 2002 and 2003 Donald L. Luskin All Rights Reserved" adjacent to the Photograph at http://www.poorandstupid.com/2004_08_29_chronArchive.asp ("Luskin Notice").

13.

Skoogfors contacted Luskin by letter on or about January 6, 2012, to inform Luskin of his infringing use of the Photograph and to demand that Luskin cease all uses of the Photograph.

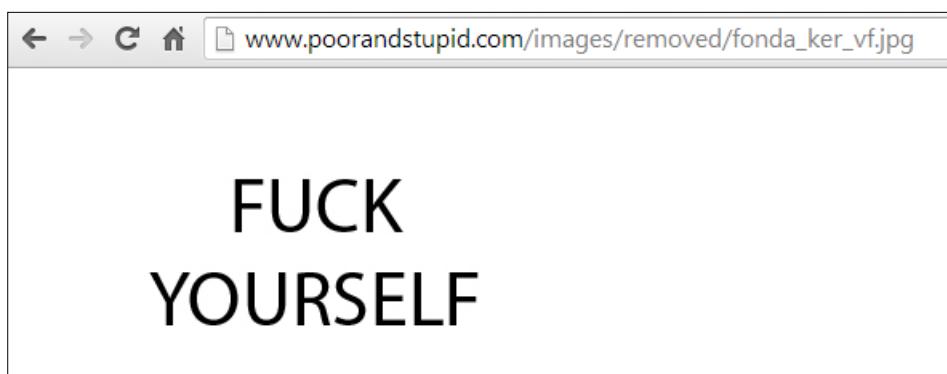
14.

Thereafter, in or around January 2012, Luskin removed the Photograph from the First Use website locations, but then reproduced, displayed, and distributed the Photograph on the Luskin Website at http://www.poorandstupid.com/images/removed/fonda_ker_vf.jpg, as shown below ("Second Use"):



15.

On May 13, 2013, an attorney representing Skoogfors contacted Luskin by email correspondence about the Second Use. Thereafter, in or around May 2013, Luskin replaced the Photograph with the statement, "FUCK YOURSELF," as shown below:



FIRST CAUSE OF ACTION

(Copyright Infringement by Luskin)

16.

Skoogfors re-alleges and incorporates by reference Paragraphs 1 through 15 above.

17.

Luskin reproduced, displayed, and distributed to the public copies of the Photograph without authorization of Skoogfors or the law for the First Use and the Second Use (collectively, the “Infringement”).

18.

Luskin has not compensated Skoogfors for the Infringement.

19.

Skoogfors filed this complaint within the three-year statute of limitations for the Infringement pursuant to 17 U.S.C. § 507(b).

20.

Luskin's conduct violates the exclusive rights belonging to Skoogfors as owner of the copyright for the Photograph, including without limitation, Skoogfors' exclusive rights under 17 U.S.C. § 106.

21.

As a direct and proximate result of its wrongful conduct, Luskin has realized and continues to realize profits and other benefits rightfully belonging to Skoogfors for the copyright to the Photograph. Accordingly, Skoogfors seeks an award of actual damages pursuant to 17 U.S.C. § 504.

22.

In the alternative, as Skoogfors registered the Photograph with the U.S. Copyright Office prior to when the Infringement began, Skoogfors is entitled to and seeks statutory damages for the Infringement, including attorneys' fees and costs, pursuant to 17 U.S.C. §§ 504 and 505.

23.

The Infringement by Luskin was willful and performed with reckless disregard of or knowledge that the use of the Photograph was unauthorized; Skoogfors is therefore entitled to recover enhanced statutory damages pursuant to 17 U.S.C. 504.

SECOND CAUSE OF ACTION

(Digital Millennium Copyright Act Violation – 17 U.S.C. §§ 1201 *et seq.*

Falsifying Copyright Management Information)

24.

Skoogfors re-alleges and incorporates by reference Paragraphs 1 through 15 above.

25.

The Luskin Notice constitutes copyright management information pursuant to 17 U.S.C. § 1202(c)(1), (2), and (3).

26.

Luskin, without the authority of Skoogfors or the law, knowingly and intentionally induced, enabled, facilitated, and concealed the infringement by providing false copyright management information for the Photograph in violation of 17 U.S.C. § 1202(a).

27.

As a direct and proximate result of Luskin's 1202(a) violation as described above, Skoogfors has suffered damages and so is entitled to the remedies set forth under 17 U.S.C. § 1203.

28.

Specifically, Skoogfors is entitled to and seeks actual damages pursuant to 17 U.S.C. § 1203(c)(2).

29.

In the alternative, Skoogfors is entitled to and seeks statutory damages pursuant to 17 U.S.C. § 1203(c)(3)(B) and costs of litigation and attorneys' fees pursuant to 17 U.S.C. § 1203(b)(4-5).

PRAAYER FOR RELIEF

WHEREFORE, Skoogfors prays for judgment as follows:

1. Declare that Luskin's unauthorized conduct violates Skoogfors' rights under the Federal Copyright Act;
2. Declare that Luskin willfully infringed Skoogfors' rights under the Federal Copyright Act;
3. Declare that Luskin's unauthorized conduct violated Skoogfors' rights under the Digital Millennium Copyright Act;
4. Order Luskin to account to Skoogfors for all gains, profits, and advantages derived from the reproduction, display, and distribution of the Photograph;
5. Order Luskin to pay Skoogfors all profits and damages in such amount as may be found pursuant to 17 U.S.C. § 504(b) (with interest thereon at the highest legal rate)

for Luskin's infringement of the Photograph; alternatively, maximum statutory damages in the amount of \$30,000 for each infringement pursuant to 17 U.S.C. § 504 (c)(1); or such other amount as may be proper pursuant to 17 U.S.C. § 504;

6. Award Skoogfors maximum statutory damages in the amount of \$150,000 for Luskin's Infringement of Skoogfors' copyrights in the Photograph pursuant to 17 U.S.C. § 504 (c)(2); or such other amount as may be proper pursuant to 17 U.S.C. § 504;
7. Award Skoogfors actual damages suffered and profits for each violation of 17 U.S.C. § 1202 (a) pursuant to 17 U.S.C. § 1203(c)(2); or such other amount as may be proper pursuant to 17 U.S.C. § 1203;
8. Award Skoogfors maximum statutory damages in the amount of \$25,000 for each violation of 17 U.S.C. § 1202 (a) pursuant to 17 U.S.C. § 1203(c)(3)(B); or such other amount as may be proper pursuant to 17 U.S.C. § 1203;
9. Order Luskin to pay Skoogfors his costs of litigation and reasonable attorneys' fees in this action pursuant to 17 U.S.C. § 505 and 17 U.S.C. § 1203;
10. Order Luskin to deliver to Skoogfors all copies of the Photograph and all other materials containing such infringing copies of the Photograph in Luskin's possession, custody or control;
11. Order Luskin, his agents, and his servants to be enjoined during the pendency of this action and permanently from infringing the copyrights of Skoogfors in any manner and from reproducing, distributing, displaying, or creating derivative works of the Photograph; and

12. Order such other and further relief as this Honorable Court deems just and equitable.

Plaintiff demands a jury trial on all of the foregoing counts.

Respectfully submitted, this 9th day of December, 2013.

_____s/ Natalie A. Remien_____

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_____s/ Craig E. Donnelly_____

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